Del. 40; *Cox* v. *People,* 82 Ill. 191; *McDade* v. *People,* 29 Mich. 50. In the principal case there was clearly solicitation of C to commit the crime, rather than an attempt by the defendant to commit embracery himself.

EQUITY—RELIEF ON CONTRACT FOR BENEFIT OF THIRD PERSON.—D Union contracted with P's predecessor to sell to the latter the entire loganberry crop of some of its members. In order to secure performance of this agreement the union entered into contracts with the several growers by which it was constituted agent to sell the crops to P's predecessor and the growers agreed to deliver their crops to P's predecessor. Upon threatened breach of these contracts P brought a bill in equity for specific performance of the contracts and injunction against sale to others. On appeal from an order sustaining the demurrer of the growers it was *held,* that the injunction should have been granted. *Phez Co.* v. *Salem Fruit Union et al.* (Ore., 1921), 201 Pac. 222.

In the instant case there are several grounds for equitable relief—character of the chattels (see next note), avoidance of multiplicity of suits, and the nature of the contract involved. In regard to the last point the court says that there is respectable authority to the effect that the proper remedy for the breach of third-party beneficiary contracts is in equity rather than law. The only authority cited is Mr. Williston's very able argument in his work on CONTRACTS, § 358, 359, in which he points out the practical advantages of determining the entire controversy in equity. However, Mr. Williston cites little authority on the subject. In *Peel* v. *Peel,* 17 W. R. 586, the beneficiary was given specific performance of a contract to pay an annuity on the ground that the promisee would suffer no pecuniary damage from the breach. In a subsequent English case, *Re Rotherham Alum & Chemical Co.,* 25 Ch. D. 103, Lord Lindley said that the beneficiary has no peculiar equity. No American cases seem to have passed squarely upon the subject. In some jurisdictions where the beneficiary cannot sue at law in his own name he is allowed to bring a bill in equity on the theory of being subrogated to the rights of his debtor. *Smith* v. *Robins,* 149 C. C. A. 324; *Palmer* v. *Bray,* 136 Mich. 85; *Green* v. *McDonald,* 75 Vt. 93. Such cases obviously afford no authority for the principal case because Oregon permits an action at law. *Davidson* v. *Madden,* 89 Ore. 209. It will be interesting to note whether, in the absence of other equitable grounds, the courts will follow Mr. Williston and the principal case.

EQUITY—SPECIFIC PERFORMANCE OF CONTRACT TO SELL CHATTELS.—For statement of facts, see preceding note on *Phez* v. *Salem Fruit Union.*

The doctrine is well settled that ordinarily contracts for the delivery of chattels will not be specifically enforced. The reason is that money damages will usually compensate the disappointed promisee and permit him to purchase other chattels of like kind. However, if the legal remedy is inadequate the contract may be specifically enforced. POMEROY ON EQUITY JURISPRUDENCE, §§ 2170, 2171. Some of the reasons for the inadequacy of the legal remedy are that the chattel is unique, that the supply is limited, or

that the damages are conjectural. In the instant case it was alleged that the total crop of loganberries was quite limited and that the berries contracted for were essential to the carrying on of P's canning business. Thus the legal remedy appears to be entirely inadequate. Like chattels could not be obtained elsewhere and ascertaining the damage would involve an inquiry into lost profits and possibly the value of P's business. In *Curtice Bros. Co.* v. *Catts,* 72 N. J. Eq. 831, a contract to sell tomatoes was specifically enforced because of the uncertainty of the market. Other examples of the enforcement of delivery of rather prosaic chattels may be found in *Equitable Gas Light Co.* v. *Baltimore Coal Tar & Mfg. Co.,* 63 Md. 285, (coal tar); *Gloucester I. & G. Co.* v. *Russia Cement Co.,* 154 Mass. 92, (fish skins); *Omaha Lumber Co.* v. *Coöperative Inv. Co.,* 55 Colo. 171, (standing timber). The principal case would appear to be well within such a line of authorities.

EVIDENCE—PROBATIVE VALUE OF PRESUMPTIONS.—In an action to recover for baggage destroyed by fire, the defendant offered in evidence rates filed with the Interstate Commerce Commission to show that the goods accepted as baggage should be classed as merchandise. The court ruled that the rate schedules were not conclusive unless they were also on file in the railway office. When the defendant rested he had introduced no evidence to prove this, but *held,* that since there was a penalty for failure to file the schedule of rates, the presumption of innocence could be used as evidence to aid defendant in establishing the fact of the rates being filed, but would not justify a directed verdict since it was opposed by the conflicting presumption that the agent acted correctly in accepting the goods as baggage. *Simpson* v. *Central Vt. R. Co.* (Vt., 1921), 115 Atl. 299.

The decision is in accord with previous Vermont holdings. It was held reversible error for the trial court to refuse to charge that the presumption of undue influence was to be regarded as a piece of evidence to be weighed in favor of the contestants. *In re Cowdry's Will,* 77 Vt. 359. Reliance is placed on *Coffin* v. *United States,* 156 U. S. 432, which held that the presumption of innocence was to be considered as evidence in favor of the accused, and that an instruction as to the necessity of proving him guilty beyond a reasonable doubt was not sufficient. This rule was again approved in *Kirby* v. *United States,* 174 U. S. 47. It has been held that the fact that a woman endorsed certificates of stock created a presumption that she knew their contents, and the presumption stood in lieu of evidence of the fact, and should be weighed against facts offered in rebuttal. *Williams* v. *Vreeland,* 244 Fed. 346. But it seems that the Supreme Court earlier entertained a different opinion from that expressed in *Coffin* v. *United States, supra.* As, "the presumption that public officers have done their duty, like the presumption of innocence, is undoubtedly a legal presumption; but it does not supply proof of a substantive fact." *United States* v. *Ross,* 92 U. S. 281. And also, "presumptions are indulged to supply the place of facts; they are never allowed against ascertained and established facts. When these appear, presumptions disappear." *Lincoln* v. *French,* 105 U. S. 614. These two decisions suggest what appears to be the more accurate and sound rule—*i. e.,*